

PROPOSED AMENDMENT
SENATE AMENDMENTS TO S.B. 1374
(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 13-2008, Arizona Revised Statutes, is amended to
3 read:

4 13-2008. Taking or knowingly accepting identity of another
5 person or entity; classification

6 A. A person commits taking the identity of another person or entity if
7 the person knowingly takes, purchases, manufactures, records, possesses or
8 uses any personal identifying information or entity identifying information
9 of another person or entity, including a real or fictitious person or entity,
10 without the consent of that other person or entity, with the intent to obtain
11 or use the other person's or entity's identity for any unlawful purpose or to
12 cause loss to a person or entity whether or not the person or entity actually
13 suffers any economic loss as a result of the offense, **OR WITH THE INTENT TO**
14 **OBTAIN OR CONTINUE EMPLOYMENT.**

15 B. A PERSON COMMITS KNOWINGLY ACCEPTING THE IDENTITY OF ANOTHER PERSON
16 IF THE PERSON, IN HIRING AN EMPLOYEE, KNOWINGLY DOES BOTH OF THE FOLLOWING:

17 1. ACCEPTS ANY PERSONAL IDENTIFYING INFORMATION OF ANOTHER PERSON FROM
18 AN INDIVIDUAL AND KNOWS THAT THE INDIVIDUAL IS NOT THE ACTUAL PERSON
19 IDENTIFIED BY THAT INFORMATION.

20 2. USES THAT IDENTITY INFORMATION FOR THE PURPOSE OF DETERMINING
21 WHETHER THE INDIVIDUAL WHO PRESENTED THAT IDENTITY INFORMATION HAS THE LEGAL
22 RIGHT OR AUTHORIZATION UNDER FEDERAL LAW TO WORK IN THE UNITED STATES AS
23 DESCRIBED AND DETERMINED UNDER THE PROCESSES AND PROCEDURES UNDER 8 UNITED
24 STATES CODE SECTION 1324a.

1 ~~B.~~ C. On the request of a person or entity, a peace officer in any
2 jurisdiction in which an element of ~~the~~ AN offense UNDER THIS SECTION is
3 committed, a result of ~~the~~ AN offense UNDER THIS SECTION occurs or the person
4 or entity whose identity is taken OR ACCEPTED resides or is located shall
5 take a report. The peace officer may provide a copy of the report to any
6 other law enforcement agency that is located in a jurisdiction in which a
7 violation of this section occurred.

8 ~~C.~~ D. If a defendant is alleged to have committed multiple violations
9 of this section within the same county, the prosecutor may file a complaint
10 charging all of the violations and any related charges under other sections
11 that have not been previously filed in any precinct in which a violation is
12 alleged to have occurred. If a defendant is alleged to have committed
13 multiple violations of this section within the state, the prosecutor may file
14 a complaint charging all of the violations and any related charges under
15 other sections that have not been previously filed in any county in which a
16 violation is alleged to have occurred.

17 ~~D.~~ E. This section does not apply to a violation of section 4-241 by
18 a person who is under twenty-one years of age.

19 ~~E.~~ F. Taking the identity of another person or entity OR KNOWINGLY
20 ACCEPTING THE IDENTITY OF ANOTHER PERSON is a class 4 felony.

21 Sec. 2. Section 13-2010, Arizona Revised Statutes, is amended to read:

22 13-2010. Trafficking in the identity of another person or
23 entity; classification

24 A. A person commits trafficking in the identity of another person or
25 entity if the person knowingly sells, transfers or transmits any personal
26 identifying information or entity identifying information of another person
27 or entity, including a real or fictitious person or entity, without the
28 consent of the other person or entity for any unlawful purpose or to cause
29 loss to the person or entity whether or not the other person or entity
30 actually suffers any economic loss, OR ALLOWING ANOTHER PERSON TO OBTAIN OR
31 CONTINUE EMPLOYMENT.

1 B. This section does not apply to a violation of section 4-241 by a
2 person who is under twenty-one years of age.

3 C. Trafficking in the identity of another person or entity is a
4 class 2 felony.

5 Sec. 3. Section 23-211, Arizona Revised Statutes, is amended to read:
6 23-211. Definitions

7 In this article, unless the context otherwise requires:

8 1. "Agency" means any agency, department, board or commission of this
9 state or a county, city or town that issues a license for purposes of
10 operating a business in this state.

11 2. "EMPLOY" MEANS HIRING AN EMPLOYEE AFTER DECEMBER 31, 2007.

12 3. "Employee":

13 (a) Means any person who ~~performs employment~~ PROVIDES services OR
14 LABOR for an employer ~~pursuant to an employment relationship between the~~
15 ~~employee and employer~~ IN THIS STATE FOR WAGES OR OTHER REMUNERATION.

16 (b) DOES NOT INCLUDE AN INDEPENDENT CONTRACTOR.

17 4. "Employer" means any individual or type of organization that
18 transacts business in this state, that has a license issued by an agency in
19 this state, ~~and that employs one or more individuals who perform employment~~
20 ~~services~~ EMPLOYEES in this state. Employer includes this state, any
21 political subdivision of this state and self-employed persons. IN THE CASE
22 OF AN INDEPENDENT CONTRACTOR, EMPLOYER MEANS THE INDEPENDENT CONTRACTOR AND
23 DOES NOT MEAN THE PERSON OR ORGANIZATION THAT USES THE CONTRACT LABOR.

24 ~~2.~~ 5. "~~Basic pilot~~ E-VERIFY program" means the ~~basic~~ employment
25 verification pilot program as jointly administered by the United States
26 department of homeland security and the social security administration or ANY
27 OF its successor ~~program~~ PROGRAMS.

28 6. "INDEPENDENT CONTRACTOR" MEANS ANY INDIVIDUAL OR ENTITY THAT
29 CARRIES ON AN INDEPENDENT BUSINESS, THAT CONTRACTS TO DO A PIECE OF WORK
30 ACCORDING TO THE INDIVIDUAL'S OR ENTITY'S OWN MEANS AND METHODS AND THAT IS
31 SUBJECT TO CONTROL ONLY AS TO RESULTS. WHETHER AN INDIVIDUAL OR ENTITY IS AN

1 INDEPENDENT CONTRACTOR IS DETERMINED ON A CASE-BY-CASE BASIS THROUGH VARIOUS
2 FACTORS, INCLUDING WHETHER THE INDIVIDUAL OR ENTITY:

- 3 (a) SUPPLIES THE TOOLS OR MATERIALS.
- 4 (b) MAKES SERVICES AVAILABLE TO THE GENERAL PUBLIC.
- 5 (c) WORKS FOR A NUMBER OF CLIENTS AT THE SAME TIME.
- 6 (d) HAS AN OPPORTUNITY FOR PROFIT OR LOSS AS A RESULT OF LABOR OR
7 SERVICE PROVIDED.
- 8 (e) INVESTS IN THE FACILITIES FOR WORK.
- 9 (f) DIRECTS THE ORDER OR SEQUENCE IN WHICH THE WORK IS COMPLETED.
- 10 (g) DETERMINES THE HOURS WHEN THE WORK IS COMPLETED.

11 ~~5.~~ 7. "Intentionally" has the same meaning prescribed in section
12 13-105.

13 ~~6.~~ 8. "Knowingly employ an unauthorized alien" means the actions
14 described in 8 United States Code section 1324a. This term shall be
15 interpreted consistently with 8 United States Code section 1324a and any
16 applicable federal rules and regulations.

17 ~~7.~~ 9. "License":

18 (a) Means any agency permit, certificate, approval, registration,
19 charter or similar form of authorization that is required by law and that is
20 issued by any agency for the purposes of operating a business in this state.

21 (b) Includes:

22 (i) Articles of incorporation under title 10.
23 (ii) A certificate of partnership, a partnership registration or
24 articles of organization under title 29.

25 (iii) A grant of authority issued under title 10, chapter 15.

26 (iv) Any transaction privilege tax license.

27 (c) Does not include:

28 (i) Any license issued pursuant to title 45 or 49 or rules adopted
29 pursuant to those titles.

30 (ii) Any professional license.

1 10. "SOCIAL SECURITY NUMBER VERIFICATION SERVICE" MEANS THE PROGRAM
2 ADMINISTERED BY THE SOCIAL SECURITY ADMINISTRATION OR ANY OF ITS SUCCESSOR
3 PROGRAMS.

4 ~~8-~~ 11. "Unauthorized alien" means an alien who does not have the
5 legal right or authorization under federal law to work in the United States
6 as described in 8 United States Code section 1324a(h)(3).

7 Sec. 4. Section 23-212, Arizona Revised Statutes, is amended to read:

8 23-212. Knowingly employing unauthorized aliens; prohibition;
9 false and frivolous complaints; violation;
10 classification; license suspension and revocation;
11 affirmative defense

12 A. An employer shall not ~~intentionally employ an unauthorized alien or~~
13 knowingly employ an unauthorized alien. IF, IN THE CASE WHEN AN EMPLOYER
14 USES A CONTRACT, SUBCONTRACT OR OTHER INDEPENDENT CONTRACTOR AGREEMENT TO
15 OBTAIN THE LABOR OF AN ALIEN IN THIS STATE, THE EMPLOYER KNOWINGLY CONTRACTS
16 WITH AN UNAUTHORIZED ALIEN OR WITH A PERSON WHO EMPLOYS OR CONTRACTS WITH AN
17 UNAUTHORIZED ALIEN TO PERFORM THE LABOR, THE EMPLOYER VIOLATES THIS
18 SUBSECTION.

19 B. THE ATTORNEY GENERAL SHALL PRESCRIBE A COMPLAINT FORM FOR A PERSON
20 TO ALLEGE A VIOLATION OF SUBSECTION A OF THIS SECTION. THE COMPLAINANT SHALL
21 NOT BE REQUIRED TO LIST THE COMPLAINANT'S SOCIAL SECURITY NUMBER ON THE
22 COMPLAINT FORM OR TO HAVE THE COMPLAINT FORM NOTARIZED. On receipt of a
23 complaint ON A PRESCRIBED COMPLAINT FORM that an employer allegedly
24 ~~intentionally employs an unauthorized alien or~~ knowingly employs an
25 unauthorized alien, the attorney general or county attorney shall investigate
26 whether the employer has violated subsection A OF THIS SECTION. IF A
27 COMPLAINT IS RECEIVED BUT IS NOT SUBMITTED ON A PRESCRIBED COMPLAINT FORM,
28 THE ATTORNEY GENERAL OR COUNTY ATTORNEY MAY INVESTIGATE WHETHER THE EMPLOYER
29 HAS VIOLATED SUBSECTION A OF THIS SECTION. THIS SUBSECTION SHALL NOT BE
30 CONSTRUED TO PROHIBIT THE FILING OF ANONYMOUS COMPLAINTS THAT ARE NOT
31 SUBMITTED ON A PRESCRIBED COMPLAINT FORM. THE ATTORNEY GENERAL OR COUNTY
32 ATTORNEY SHALL NOT INVESTIGATE COMPLAINTS THAT ARE BASED SOLELY ON RACE,

COLOR OR NATIONAL ORIGIN. A COMPLAINT THAT IS SUBMITTED TO A COUNTY ATTORNEY SHALL BE SUBMITTED TO THE COUNTY ATTORNEY IN THE COUNTY IN WHICH THE ALLEGED UNAUTHORIZED ALIEN IS OR WAS EMPLOYED BY THE EMPLOYER. THE COUNTY SHERIFF OR ANY OTHER LOCAL LAW ENFORCEMENT AGENCY MAY ASSIST IN INVESTIGATING A COMPLAINT. When investigating a complaint, the attorney general or county attorney shall verify the work authorization of the alleged unauthorized alien with the federal government pursuant to 8 United States Code section 1373(c). A state, county or local official shall not attempt to independently make a final determination on whether an alien is authorized to work in the United States. An alien's immigration status or work authorization status shall be verified with the federal government pursuant to 8 United States Code section 1373(c). A person who knowingly files a false and frivolous complaint under this subsection is guilty of a class 3 misdemeanor.

C. If, after an investigation, the attorney general or county attorney determines that the complaint is not FALSE AND frivolous:

1. The attorney general or county attorney shall notify the United States immigration and customs enforcement of the unauthorized alien.

2. The attorney general or county attorney shall notify the local law enforcement agency of the unauthorized alien.

3. The attorney general shall notify the appropriate county attorney to bring an action pursuant to subsection D OF THIS SECTION if the complaint was originally filed with the attorney general.

D. An action for a violation of subsection A OF THIS SECTION shall be brought against the employer by the county attorney in the county where the unauthorized alien employee is OR WAS employed BY THE EMPLOYER. The county attorney shall not bring an action against any employer for any violation of subsection A OF THIS SECTION that occurs before January 1, 2008. A second violation of this section shall be based only on an unauthorized alien who is OR WAS employed by the employer after an action has been brought for a violation of subsection A OF THIS SECTION OR SECTION 23-212.01, SUBSECTION A.

1 E. For any action in superior court under this section, the court
2 shall expedite the action, including assigning the hearing at the earliest
3 practicable date.

4 F. On a finding of a violation of subsection A OF THIS SECTION:

5 1. For a first violation ~~during a three year period that is a knowing~~
6 ~~violation of subsection A~~, AS DESCRIBED IN PARAGRAPH 3 OF THIS SUBSECTION,
7 the court:

8 (a) Shall order the employer to terminate the employment of all
9 unauthorized aliens.

10 (b) Shall order the employer to be subject to a three year
11 probationary period FOR THE BUSINESS LOCATION WHERE THE UNAUTHORIZED ALIEN
12 PERFORMED WORK. During the probationary period the employer shall file
13 quarterly reports IN THE FORM PROVIDED IN SECTION 23-722.01 with the county
14 attorney of each new employee who is hired by the employer at the ~~specific~~
15 BUSINESS location where the unauthorized alien performed work.

16 (c) Shall order the employer to file a signed sworn affidavit with the
17 county attorney within three business days after the order is issued. The
18 affidavit shall state that the employer has terminated the employment of all
19 unauthorized aliens IN THIS STATE and that the employer will not
20 intentionally or knowingly employ an unauthorized alien IN THIS STATE. The
21 court shall order the appropriate agencies to suspend all licenses subject to
22 this subdivision that are held by the employer if the employer fails to file
23 a signed sworn affidavit with the county attorney within three business days
24 after the order is issued. All licenses that are suspended under this
25 subdivision shall remain suspended until the employer files a signed sworn
26 affidavit with the county attorney. Notwithstanding any other law, on filing
27 of the affidavit the suspended licenses shall be reinstated immediately by
28 the appropriate agencies. For the purposes of this subdivision, the licenses
29 that are subject to suspension under this subdivision are all licenses that
30 are held by the employer ~~and that are necessary to operate the employer's~~
31 ~~business at the employer's~~ SPECIFIC TO THE business location where the
32 unauthorized alien performed work. If ~~a license is not necessary to operate~~

1 ~~the employer's business at~~ THE EMPLOYER DOES NOT HOLD A LICENSE SPECIFIC TO
2 the ~~specific~~ BUSINESS location where the unauthorized alien performed work,
3 but a license is necessary to operate the employer's business in general, the
4 licenses that are subject to suspension under this subdivision are all
5 licenses that are held by the employer at the employer's primary place of
6 business. On receipt of the court's order and notwithstanding any other law,
7 the appropriate agencies shall suspend the licenses according to the court's
8 order. The court shall send a copy of the court's order to the attorney
9 general and the attorney general shall maintain the copy pursuant to
10 subsection G OF THIS SECTION.

11 (d) May order the appropriate agencies to suspend all licenses
12 described in subdivision (c) of this paragraph that are held by the employer
13 for not to exceed ten business days. The court shall base its decision to
14 suspend under this subdivision on any evidence or information submitted to it
15 during the action for a violation of this subsection and shall consider the
16 following factors, if relevant:

- 17 (i) The number of unauthorized aliens employed by the employer.
18 (ii) Any prior misconduct by the employer.
19 (iii) The degree of harm resulting from the violation.
20 (iv) Whether the employer made good faith efforts to comply with any
21 applicable requirements.
22 (v) The duration of the violation.
23 (vi) The role of the directors, officers or principals of the employer
24 in the violation.
25 (vii) Any other factors the court deems appropriate.

26 ~~2. For a first violation during a five year period that is an~~
27 ~~intentional violation of subsection A, the court shall:~~

28 ~~(a) Order the employer to terminate the employment of all unauthorized~~
29 ~~aliens.~~

30 ~~(b) Order the employer to be subject to a five year probationary~~
31 ~~period. During the probationary period the employer shall file quarterly~~
32 ~~reports with the county attorney of each new employee who is hired by the~~

1 ~~employer at the specific location where the unauthorized alien performed~~
2 ~~work.~~

3 ~~(c) Order the appropriate agencies to suspend all licenses, described~~
4 ~~in subdivision (d) of this paragraph that are held by the employer for a~~
5 ~~minimum of ten days. The court shall base its decision on the length of the~~
6 ~~suspension under this subdivision on any evidence or information submitted to~~
7 ~~it during the action for a violation of this subsection and shall consider~~
8 ~~the following factors, if relevant:~~

- 9 ~~(i) The number of unauthorized aliens employed by the employer.~~
10 ~~(ii) Any prior misconduct by the employer.~~
11 ~~(iii) The degree of harm resulting from the violation.~~
12 ~~(iv) Whether the employer made good faith efforts to comply with any~~
13 ~~applicable requirements.~~
14 ~~(v) The duration of the violation.~~
15 ~~(vi) The role of the directors, officers or principals of the employer~~
16 ~~in the violation.~~
17 ~~(vii) Any other factors the court deems appropriate.~~

18 ~~(d) Order the employer to file a signed sworn affidavit with the~~
19 ~~county attorney. The affidavit shall state that the employer has terminated~~
20 ~~the employment of all unauthorized aliens and that the employer will not~~
21 ~~intentionally or knowingly employ an unauthorized alien. All licenses that~~
22 ~~are suspended under this subdivision shall remain suspended until the~~
23 ~~employer files a signed sworn affidavit with the county attorney. For the~~
24 ~~purposes of this subdivision, the licenses that are subject to suspension~~
25 ~~under this subdivision are all licenses that are held by the employer and~~
26 ~~that are necessary to operate the employer's business at the employer's~~
27 ~~business location where the unauthorized alien performed work. If a license~~
28 ~~is not necessary to operate the employer's business at the specific location~~
29 ~~where the unauthorized alien performed work, but a license is necessary to~~
30 ~~operate the employer's business in general, the licenses that are subject to~~
31 ~~suspension under this subdivision are all licenses that are held by the~~
32 ~~employer at the employer's primary place of business. On receipt of the~~

~~court's order and notwithstanding any other law, the appropriate agencies shall suspend the licenses according to the court's order. The court shall send a copy of the court's order to the attorney general and the attorney general shall maintain the copy pursuant to subsection G.~~

~~3.~~ 2. For a second violation ~~of subsection A during the period of probation,~~ AS DESCRIBED IN PARAGRAPH 3 OF THIS SUBSECTION, the court shall order the appropriate agencies to permanently revoke all licenses that are held by the employer ~~and that are necessary to operate the employer's business at the employer's~~ SPECIFIC TO THE business location where the unauthorized alien performed work. If ~~a license is not necessary to operate the employer's business at~~ THE EMPLOYER DOES NOT HOLD A LICENSE SPECIFIC TO the ~~specific~~ BUSINESS location where the unauthorized alien performed work, but a license is necessary to operate the employer's business in general, the court shall order the appropriate agencies to permanently revoke all licenses that are held by the employer at the employer's primary place of business. On receipt of the order and notwithstanding any other law, the appropriate agencies shall immediately revoke the licenses.

3. THE VIOLATION SHALL BE CONSIDERED:

(a) A FIRST VIOLATION BY AN EMPLOYER AT A BUSINESS LOCATION IF THE VIOLATION DID NOT OCCUR DURING A PROBATIONARY PERIOD ORDERED BY THE COURT UNDER THIS SUBSECTION OR SECTION 23-212.01, SUBSECTION F FOR THAT EMPLOYER'S BUSINESS LOCATION.

(b) A SECOND VIOLATION BY AN EMPLOYER AT A BUSINESS LOCATION IF THE VIOLATION OCCURRED DURING A PROBATIONARY PERIOD ORDERED BY THE COURT UNDER THIS SUBSECTION OR SECTION 23-212.01, SUBSECTION F FOR THAT EMPLOYER'S BUSINESS LOCATION.

G. The attorney general shall maintain copies of court orders that are received pursuant to subsection F OF THIS SECTION and shall maintain a database of the employers ~~who~~ AND BUSINESS LOCATIONS THAT have a first violation of subsection A OF THIS SECTION and make the court orders available on the attorney general's website.

1 H. On determining whether an employee is an unauthorized alien, the
2 court shall consider only the federal government's determination pursuant to
3 8 United States Code section 1373(c). The federal government's determination
4 creates a rebuttable presumption of the employee's lawful status. The court
5 may take judicial notice of the federal government's determination and may
6 request the federal government to provide automated or testimonial
7 verification pursuant to 8 United States Code section 1373(c).

8 I. For the purposes of this section, proof of verifying the employment
9 authorization of an employee through the ~~basic-pilot~~ E-VERIFY program creates
10 a rebuttable presumption that an employer did not ~~intentionally employ an~~
11 ~~unauthorized alien or~~ knowingly employ an unauthorized alien.

12 J. For the purposes of this section, an employer ~~who~~ THAT establishes
13 that it has complied in good faith with the requirements of 8 United States
14 Code section ~~1324b~~ 1324a(b) establishes an affirmative defense that the
15 employer did not ~~intentionally or~~ knowingly employ an unauthorized alien. AN
16 EMPLOYER IS CONSIDERED TO HAVE COMPLIED WITH THE REQUIREMENTS OF 8 UNITED
17 STATES CODE SECTION 1324a(b), NOTWITHSTANDING AN ISOLATED, SPORADIC OR
18 ACCIDENTAL TECHNICAL OR PROCEDURAL FAILURE TO MEET THE REQUIREMENTS, IF THERE
19 IS A GOOD FAITH ATTEMPT TO COMPLY WITH THE REQUIREMENTS.

20 Sec. 5. Title 23, chapter 2, article 2, Arizona Revised Statutes, is
21 amended by adding section 23-212.01, to read:

22 23-212.01. Intentionally employing unauthorized aliens;
23 prohibition; false and frivolous complaints;
24 violation; classification; license suspension and
25 revocation; affirmative defense

26 A. AN EMPLOYER SHALL NOT INTENTIONALLY EMPLOY AN UNAUTHORIZED ALIEN.
27 IF, IN THE CASE WHEN AN EMPLOYER USES A CONTRACT, SUBCONTRACT OR OTHER
28 INDEPENDENT CONTRACTOR AGREEMENT TO OBTAIN THE LABOR OF AN ALIEN IN THIS
29 STATE, THE EMPLOYER INTENTIONALLY CONTRACTS WITH AN UNAUTHORIZED ALIEN OR
30 WITH A PERSON WHO EMPLOYS OR CONTRACTS WITH AN UNAUTHORIZED ALIEN TO PERFORM
31 THE LABOR, THE EMPLOYER VIOLATES THIS SUBSECTION.

1 B. THE ATTORNEY GENERAL SHALL PRESCRIBE A COMPLAINT FORM FOR A PERSON
2 TO ALLEGE A VIOLATION OF SUBSECTION A OF THIS SECTION. THE COMPLAINANT SHALL
3 NOT BE REQUIRED TO LIST THE COMPLAINANT'S SOCIAL SECURITY NUMBER ON THE
4 COMPLAINT FORM OR TO HAVE THE COMPLAINT FORM NOTARIZED. ON RECEIPT OF A
5 COMPLAINT ON A PRESCRIBED COMPLAINT FORM THAT AN EMPLOYER ALLEGEDLY
6 INTENTIONALLY EMPLOYS AN UNAUTHORIZED ALIEN, THE ATTORNEY GENERAL OR COUNTY
7 ATTORNEY SHALL INVESTIGATE WHETHER THE EMPLOYER HAS VIOLATED SUBSECTION A OF
8 THIS SECTION. IF A COMPLAINT IS RECEIVED BUT IS NOT SUBMITTED ON A
9 PRESCRIBED COMPLAINT FORM, THE ATTORNEY GENERAL OR COUNTY ATTORNEY MAY
10 INVESTIGATE WHETHER THE EMPLOYER HAS VIOLATED SUBSECTION A OF THIS SECTION.
11 THIS SUBSECTION SHALL NOT BE CONSTRUED TO PROHIBIT THE FILING OF ANONYMOUS
12 COMPLAINTS THAT ARE NOT SUBMITTED ON A PRESCRIBED COMPLAINT FORM. THE
13 ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL NOT INVESTIGATE COMPLAINTS THAT ARE
14 BASED SOLELY ON RACE, COLOR OR NATIONAL ORIGIN. A COMPLAINT THAT IS
15 SUBMITTED TO A COUNTY ATTORNEY SHALL BE SUBMITTED TO THE COUNTY ATTORNEY IN
16 THE COUNTY IN WHICH THE ALLEGED UNAUTHORIZED ALIEN IS OR WAS EMPLOYED BY THE
17 EMPLOYER. THE COUNTY SHERIFF OR ANY OTHER LOCAL LAW ENFORCEMENT AGENCY MAY
18 ASSIST IN INVESTIGATING A COMPLAINT. WHEN INVESTIGATING A COMPLAINT, THE
19 ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL VERIFY THE WORK AUTHORIZATION OF
20 THE ALLEGED UNAUTHORIZED ALIEN WITH THE FEDERAL GOVERNMENT PURSUANT TO 8
21 UNITED STATES CODE SECTION 1373(c). A STATE, COUNTY OR LOCAL OFFICIAL SHALL
22 NOT ATTEMPT TO INDEPENDENTLY MAKE A FINAL DETERMINATION ON WHETHER AN ALIEN
23 IS AUTHORIZED TO WORK IN THE UNITED STATES. AN ALIEN'S IMMIGRATION STATUS OR
24 WORK AUTHORIZATION STATUS SHALL BE VERIFIED WITH THE FEDERAL GOVERNMENT
25 PURSUANT TO 8 UNITED STATES CODE SECTION 1373(c). A PERSON WHO KNOWINGLY
26 FILES A FALSE AND FRIVOLOUS COMPLAINT UNDER THIS SUBSECTION IS GUILTY OF A
27 CLASS 3 MISDEMEANOR.

28 C. IF, AFTER AN INVESTIGATION, THE ATTORNEY GENERAL OR COUNTY ATTORNEY
29 DETERMINES THAT THE COMPLAINT IS NOT FALSE AND FRIVOLOUS:

30 1. THE ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL NOTIFY THE UNITED
31 STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OF THE UNAUTHORIZED ALIEN.

1 2. THE ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL NOTIFY THE LOCAL LAW
2 ENFORCEMENT AGENCY OF THE UNAUTHORIZED ALIEN.

3 3. THE ATTORNEY GENERAL SHALL NOTIFY THE APPROPRIATE COUNTY ATTORNEY
4 TO BRING AN ACTION PURSUANT TO SUBSECTION D OF THIS SECTION IF THE COMPLAINT
5 WAS ORIGINALLY FILED WITH THE ATTORNEY GENERAL.

6 D. AN ACTION FOR A VIOLATION OF SUBSECTION A OF THIS SECTION SHALL BE
7 BROUGHT AGAINST THE EMPLOYER BY THE COUNTY ATTORNEY IN THE COUNTY WHERE THE
8 UNAUTHORIZED ALIEN EMPLOYEE IS OR WAS EMPLOYED BY THE EMPLOYER. THE COUNTY
9 ATTORNEY SHALL NOT BRING AN ACTION AGAINST ANY EMPLOYER FOR ANY VIOLATION OF
10 SUBSECTION A OF THIS SECTION THAT OCCURS BEFORE JANUARY 1, 2008. A SECOND
11 VIOLATION OF THIS SECTION SHALL BE BASED ONLY ON AN UNAUTHORIZED ALIEN WHO IS
12 OR WAS EMPLOYED BY THE EMPLOYER AFTER AN ACTION HAS BEEN BROUGHT FOR A
13 VIOLATION OF SUBSECTION A OF THIS SECTION OR SECTION 23-212, SUBSECTION A.

14 E. FOR ANY ACTION IN SUPERIOR COURT UNDER THIS SECTION, THE COURT
15 SHALL EXPEDITE THE ACTION, INCLUDING ASSIGNING THE HEARING AT THE EARLIEST
16 PRACTICABLE DATE.

17 F. ON A FINDING OF A VIOLATION OF SUBSECTION A OF THIS SECTION:

18 1. FOR A FIRST VIOLATION, AS DESCRIBED IN PARAGRAPH 3 OF THIS
19 SUBSECTION, THE COURT SHALL:

20 (a) ORDER THE EMPLOYER TO TERMINATE THE EMPLOYMENT OF ALL UNAUTHORIZED
21 ALIENS.

22 (b) ORDER THE EMPLOYER TO BE SUBJECT TO A FIVE YEAR PROBATIONARY
23 PERIOD FOR THE BUSINESS LOCATION WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK.
24 DURING THE PROBATIONARY PERIOD THE EMPLOYER SHALL FILE QUARTERLY REPORTS IN
25 THE FORM PROVIDED IN SECTION 23-722.01 WITH THE COUNTY ATTORNEY OF EACH NEW
26 EMPLOYEE WHO IS HIRED BY THE EMPLOYER AT THE BUSINESS LOCATION WHERE THE
27 UNAUTHORIZED ALIEN PERFORMED WORK.

28 (c) ORDER THE APPROPRIATE AGENCIES TO SUSPEND ALL LICENSES DESCRIBED
29 IN SUBDIVISION (d) OF THIS PARAGRAPH THAT ARE HELD BY THE EMPLOYER FOR A
30 MINIMUM OF TEN DAYS. THE COURT SHALL BASE ITS DECISION ON THE LENGTH OF THE
31 SUSPENSION UNDER THIS SUBDIVISION ON ANY EVIDENCE OR INFORMATION SUBMITTED TO

1 IT DURING THE ACTION FOR A VIOLATION OF THIS SUBSECTION AND SHALL CONSIDER
2 THE FOLLOWING FACTORS, IF RELEVANT:

3 (i) THE NUMBER OF UNAUTHORIZED ALIENS EMPLOYED BY THE EMPLOYER.

4 (ii) ANY PRIOR MISCONDUCT BY THE EMPLOYER.

5 (iii) THE DEGREE OF HARM RESULTING FROM THE VIOLATION.

6 (iv) WHETHER THE EMPLOYER MADE GOOD FAITH EFFORTS TO COMPLY WITH ANY
7 APPLICABLE REQUIREMENTS.

8 (v) THE DURATION OF THE VIOLATION.

9 (vi) THE ROLE OF THE DIRECTORS, OFFICERS OR PRINCIPALS OF THE EMPLOYER
10 IN THE VIOLATION.

11 (vii) ANY OTHER FACTORS THE COURT DEEMS APPROPRIATE.

12 (d) ORDER THE EMPLOYER TO FILE A SIGNED SWORN AFFIDAVIT WITH THE
13 COUNTY ATTORNEY. THE AFFIDAVIT SHALL STATE THAT THE EMPLOYER HAS TERMINATED
14 THE EMPLOYMENT OF ALL UNAUTHORIZED ALIENS IN THIS STATE AND THAT THE EMPLOYER
15 WILL NOT INTENTIONALLY OR KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN IN THIS
16 STATE. THE COURT SHALL ORDER THE APPROPRIATE AGENCIES TO SUSPEND ALL
17 LICENSES SUBJECT TO THIS SUBDIVISION THAT ARE HELD BY THE EMPLOYER IF THE
18 EMPLOYER FAILS TO FILE A SIGNED SWORN AFFIDAVIT WITH THE COUNTY ATTORNEY
19 WITHIN THREE BUSINESS DAYS AFTER THE ORDER IS ISSUED. ALL LICENSES THAT ARE
20 SUSPENDED UNDER THIS SUBDIVISION FOR FAILING TO FILE A SIGNED SWORN AFFIDAVIT
21 SHALL REMAIN SUSPENDED UNTIL THE EMPLOYER FILES A SIGNED SWORN AFFIDAVIT WITH
22 THE COUNTY ATTORNEY. FOR THE PURPOSES OF THIS SUBDIVISION, THE LICENSES THAT
23 ARE SUBJECT TO SUSPENSION UNDER THIS SUBDIVISION ARE ALL LICENSES THAT ARE
24 HELD BY THE EMPLOYER SPECIFIC TO THE BUSINESS LOCATION WHERE THE UNAUTHORIZED
25 ALIEN PERFORMED WORK. IF THE EMPLOYER DOES NOT HOLD A LICENSE SPECIFIC TO
26 THE BUSINESS LOCATION WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK, BUT A
27 LICENSE IS NECESSARY TO OPERATE THE EMPLOYER'S BUSINESS IN GENERAL, THE
28 LICENSES THAT ARE SUBJECT TO SUSPENSION UNDER THIS SUBDIVISION ARE ALL
29 LICENSES THAT ARE HELD BY THE EMPLOYER AT THE EMPLOYER'S PRIMARY PLACE OF
30 BUSINESS. ON RECEIPT OF THE COURT'S ORDER AND NOTWITHSTANDING ANY OTHER LAW,
31 THE APPROPRIATE AGENCIES SHALL SUSPEND THE LICENSES ACCORDING TO THE COURT'S
32 ORDER. THE COURT SHALL SEND A COPY OF THE COURT'S ORDER TO THE ATTORNEY

1 GENERAL AND THE ATTORNEY GENERAL SHALL MAINTAIN THE COPY PURSUANT TO
2 SUBSECTION G OF THIS SECTION.

3 2. FOR A SECOND VIOLATION, AS DESCRIBED IN PARAGRAPH 3 OF THIS
4 SUBSECTION, THE COURT SHALL ORDER THE APPROPRIATE AGENCIES TO PERMANENTLY
5 REVOKE ALL LICENSES THAT ARE HELD BY THE EMPLOYER SPECIFIC TO THE BUSINESS
6 LOCATION WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK. IF THE EMPLOYER DOES
7 NOT HOLD A LICENSE SPECIFIC TO THE BUSINESS LOCATION WHERE THE UNAUTHORIZED
8 ALIEN PERFORMED WORK, BUT A LICENSE IS NECESSARY TO OPERATE THE EMPLOYER'S
9 BUSINESS IN GENERAL, THE COURT SHALL ORDER THE APPROPRIATE AGENCIES TO
10 PERMANENTLY REVOKE ALL LICENSES THAT ARE HELD BY THE EMPLOYER AT THE
11 EMPLOYER'S PRIMARY PLACE OF BUSINESS. ON RECEIPT OF THE ORDER AND
12 NOTWITHSTANDING ANY OTHER LAW, THE APPROPRIATE AGENCIES SHALL IMMEDIATELY
13 REVOKE THE LICENSES.

14 3. THE VIOLATION SHALL BE CONSIDERED:

15 (a) A FIRST VIOLATION BY AN EMPLOYER AT A BUSINESS LOCATION IF THE
16 VIOLATION DID NOT OCCUR DURING A PROBATIONARY PERIOD ORDERED BY THE COURT
17 UNDER THIS SUBSECTION OR SECTION 23-212, SUBSECTION F FOR THAT EMPLOYER'S
18 BUSINESS LOCATION.

19 (b) A SECOND VIOLATION BY AN EMPLOYER AT A BUSINESS LOCATION IF THE
20 VIOLATION OCCURRED DURING A PROBATIONARY PERIOD ORDERED BY THE COURT UNDER
21 THIS SUBSECTION OR SECTION 23-212, SUBSECTION F FOR THAT EMPLOYER'S BUSINESS
22 LOCATION.

23 G. THE ATTORNEY GENERAL SHALL MAINTAIN COPIES OF COURT ORDERS THAT ARE
24 RECEIVED PURSUANT TO SUBSECTION F OF THIS SECTION AND SHALL MAINTAIN A
25 DATABASE OF THE EMPLOYERS AND BUSINESS LOCATIONS THAT HAVE A FIRST VIOLATION
26 OF SUBSECTION A OF THIS SECTION AND MAKE THE COURT ORDERS AVAILABLE ON THE
27 ATTORNEY GENERAL'S WEBSITE.

28 H. ON DETERMINING WHETHER AN EMPLOYEE IS AN UNAUTHORIZED ALIEN, THE
29 COURT SHALL CONSIDER ONLY THE FEDERAL GOVERNMENT'S DETERMINATION PURSUANT TO
30 8 UNITED STATES CODE SECTION 1373(c). THE FEDERAL GOVERNMENT'S DETERMINATION
31 CREATES A REBUTTABLE PRESUMPTION OF THE EMPLOYEE'S LAWFUL STATUS. THE COURT
32 MAY TAKE JUDICIAL NOTICE OF THE FEDERAL GOVERNMENT'S DETERMINATION AND MAY

1 REQUEST THE FEDERAL GOVERNMENT TO PROVIDE AUTOMATED OR TESTIMONIAL
2 VERIFICATION PURSUANT TO 8 UNITED STATES CODE SECTION 1373(c).

3 I. FOR THE PURPOSES OF THIS SECTION, PROOF OF VERIFYING THE EMPLOYMENT
4 AUTHORIZATION OF AN EMPLOYEE THROUGH THE E-VERIFY PROGRAM CREATES A
5 REBUTTABLE PRESUMPTION THAT AN EMPLOYER DID NOT INTENTIONALLY EMPLOY AN
6 UNAUTHORIZED ALIEN.

7 J. FOR THE PURPOSES OF THIS SECTION, AN EMPLOYER THAT ESTABLISHES THAT
8 IT HAS COMPLIED IN GOOD FAITH WITH THE REQUIREMENTS OF 8 UNITED STATES CODE
9 SECTION 1324a(b) ESTABLISHES AN AFFIRMATIVE DEFENSE THAT THE EMPLOYER DID NOT
10 INTENTIONALLY EMPLOY AN UNAUTHORIZED ALIEN. AN EMPLOYER IS CONSIDERED TO
11 HAVE COMPLIED WITH THE REQUIREMENTS OF 8 UNITED STATES CODE SECTION 1324a(b),
12 NOTWITHSTANDING AN ISOLATED, SPORADIC OR ACCIDENTAL TECHNICAL OR PROCEDURAL
13 FAILURE TO MEET THE REQUIREMENTS, IF THERE IS A GOOD FAITH ATTEMPT TO COMPLY
14 WITH THE REQUIREMENTS.

15 Sec. 6. Section 23-214, Arizona Revised Statutes, is amended to read:

16 23-214. Verification of employment eligibility; E-verify
17 program; economic development incentives; list of
18 registered employers

19 A. After December 31, 2007, every employer, after hiring an employee,
20 shall verify the employment eligibility of the employee through the ~~basic~~
21 ~~pilot~~ E-VERIFY program.

22 B. IN ADDITION TO ANY OTHER REQUIREMENT FOR AN EMPLOYER TO RECEIVE AN
23 ECONOMIC DEVELOPMENT INCENTIVE FROM A GOVERNMENT ENTITY, THE EMPLOYER SHALL
24 REGISTER WITH AND PARTICIPATE IN THE E-VERIFY PROGRAM. BEFORE RECEIVING THE
25 ECONOMIC DEVELOPMENT INCENTIVE, THE EMPLOYER SHALL PROVIDE PROOF TO THE
26 GOVERNMENT ENTITY THAT THE EMPLOYER IS REGISTERED WITH AND IS PARTICIPATING
27 IN THE E-VERIFY PROGRAM. IF THE GOVERNMENT ENTITY DETERMINES THAT THE
28 EMPLOYER IS NOT COMPLYING WITH THIS SUBSECTION, THE GOVERNMENT ENTITY SHALL
29 NOTIFY THE EMPLOYER BY CERTIFIED MAIL OF THE GOVERNMENT ENTITY'S
30 DETERMINATION OF NONCOMPLIANCE AND THE EMPLOYER'S RIGHT TO APPEAL THE
31 DETERMINATION. ON A FINAL DETERMINATION OF NONCOMPLIANCE, THE EMPLOYER SHALL
32 REPAY ALL MONIES RECEIVED AS AN ECONOMIC DEVELOPMENT INCENTIVE TO THE

1 GOVERNMENT ENTITY WITHIN THIRTY DAYS OF THE FINAL DETERMINATION. FOR THE
2 PURPOSES OF THIS SUBSECTION:

3 1. "ECONOMIC DEVELOPMENT INCENTIVE" MEANS ANY GRANT, LOAN,
4 PERFORMANCE-BASED INCENTIVE OR OTHER ECONOMIC DEVELOPMENT INCENTIVE FROM ANY
5 GOVERNMENT ENTITY THAT IS AWARDED AFTER SEPTEMBER 30, 2008.

6 2. "GOVERNMENT ENTITY" MEANS THIS STATE AND ANY POLITICAL SUBDIVISION
7 OF THIS STATE THAT RECEIVES AND USES TAX REVENUES.

8 C. EVERY THREE MONTHS THE ATTORNEY GENERAL SHALL REQUEST FROM THE
9 UNITED STATES DEPARTMENT OF HOMELAND SECURITY A LIST OF EMPLOYERS FROM THIS
10 STATE THAT ARE REGISTERED WITH THE E-VERIFY PROGRAM. ON RECEIPT OF THE LIST
11 OF EMPLOYERS, THE ATTORNEY GENERAL SHALL MAKE THE LIST AVAILABLE ON THE
12 ATTORNEY GENERAL'S WEBSITE.

13 Sec. 7. Title 23, chapter 2, article 2, Arizona Revised Statutes, is
14 amended by adding sections 23-215 and 23-216, to read:

15 23-215. Voluntary employer enhanced compliance program; program
16 termination

17 A. THE ATTORNEY GENERAL SHALL ESTABLISH THE VOLUNTARY EMPLOYER
18 ENHANCED COMPLIANCE PROGRAM. THE PROGRAM IS VOLUNTARY AND AN EMPLOYER IS NOT
19 REQUIRED TO ENROLL IN THE PROGRAM.

20 B. AN EMPLOYER THAT IS ON PROBATION UNDER SECTION 23-212 OR 23-212.01
21 MAY NOT ENROLL IN THE VOLUNTARY EMPLOYER ENHANCED COMPLIANCE PROGRAM. A
22 COURT SHALL NOT CONSIDER NONENROLLMENT IN THE VOLUNTARY EMPLOYER ENHANCED
23 COMPLIANCE PROGRAM AS A FACTOR WHEN DETERMINING WHETHER TO SUSPEND OR REVOKE
24 A LICENSE UNDER SECTION 23-212 OR 23-212.01.

25 C. TO ENROLL IN THE VOLUNTARY EMPLOYER ENHANCED COMPLIANCE PROGRAM, AN
26 EMPLOYER SHALL SUBMIT A SIGNED SWORN AFFIDAVIT TO THE ATTORNEY GENERAL. THE
27 AFFIDAVIT SHALL STATE THAT THE EMPLOYER AGREES TO PERFORM ALL OF THE
28 FOLLOWING ACTIONS IN GOOD FAITH:

1 1. AFTER HIRING AN EMPLOYEE, THE EMPLOYER SHALL VERIFY THE EMPLOYMENT
2 ELIGIBILITY OF THE EMPLOYEE THROUGH THE E-VERIFY PROGRAM.

3 2. TO ENSURE THE ACCURACY OF REPORTING WAGES TO THE SOCIAL SECURITY
4 ADMINISTRATION, THE EMPLOYER SHALL VERIFY THE ACCURACY OF SOCIAL SECURITY
5 NUMBERS THROUGH THE SOCIAL SECURITY NUMBER VERIFICATION SERVICE FOR ANY
6 EMPLOYEE WHO IS NOT VERIFIED THROUGH THE E-VERIFY PROGRAM. WITHIN THIRTY
7 DAYS AFTER ENROLLING IN THE VOLUNTARY EMPLOYER ENHANCED COMPLIANCE PROGRAM,
8 THE EMPLOYER SHALL SUBMIT THE NECESSARY INFORMATION TO THE SOCIAL SECURITY
9 NUMBER VERIFICATION SERVICE, INCLUDING THE FULL NAME, THE SOCIAL SECURITY
10 NUMBER, THE DATE OF BIRTH AND THE GENDER OF EACH EMPLOYEE. ON RECEIPT OF A
11 FAILED VERIFICATION RESULT, THE EMPLOYER SHALL NOTIFY THE EMPLOYEE OF THE
12 DATE ON WHICH THE EMPLOYER RECEIVED THE FAILED RESULT AND INSTRUCT THE
13 EMPLOYEE TO RESOLVE THE DISCREPANCY WITH THE SOCIAL SECURITY ADMINISTRATION
14 WITHIN NINETY DAYS AFTER THAT DATE. THE EMPLOYER AND EMPLOYEE SHALL RESOLVE
15 ANY FAILED RESULT WITHIN NINETY DAYS AFTER THE DATE ON WHICH THE EMPLOYER
16 RECEIVED THE FAILED RESULT. IF THE FAILED RESULT IS NOT RESOLVED WITHIN THE
17 NINETY-DAY PERIOD BUT THE EMPLOYER AND EMPLOYEE ARE CONTINUING TO ACTIVELY
18 AND CONSISTENTLY WORK TOWARD RESOLVING THE FAILED RESULT WITH THE SOCIAL
19 SECURITY ADMINISTRATION, THE NINETY-DAY PERIOD DOES NOT APPLY AS LONG AS THE
20 EMPLOYER AND EMPLOYEE HAVE DOCUMENTED PROOF OF THESE ONGOING EFFORTS TO
21 RESOLVE THE FAILED RESULT IN GOOD FAITH AND HAVE PROVIDED THE DOCUMENTED
22 PROOF TO THE ATTORNEY GENERAL. THE EMPLOYER SHALL VERIFY THE ACCURACY OF THE
23 SOCIAL SECURITY NUMBERS AND RESOLVE ANY FAILED VERIFICATION RESULTS IN A
24 CONSISTENT MANNER FOR ALL EMPLOYEES.

25 3. IN RESPONSE TO A WRITTEN REQUEST BY THE ATTORNEY GENERAL OR COUNTY
26 ATTORNEY STATING THE NAME OF AN EMPLOYEE FOR WHOM A COMPLAINT HAS BEEN
27 RECEIVED UNDER SECTION 23-212 OR 23-212.01, THE EMPLOYER SHALL PROVIDE THE
28 ATTORNEY GENERAL OR COUNTY ATTORNEY THE DOCUMENTS INDICATING THAT THE
29 EMPLOYEE WAS VERIFIED THROUGH THE E-VERIFY PROGRAM OR THAT THE ACCURACY OF
30 THE EMPLOYEE'S WAGE REPORT WAS VERIFIED THROUGH THE SOCIAL SECURITY NUMBER
31 VERIFICATION SERVICE UNDER THIS SECTION.

1 D. AN EMPLOYER THAT IS ENROLLED IN THE VOLUNTARY EMPLOYER ENHANCED
2 COMPLIANCE PROGRAM SHALL NOT BE IN VIOLATION OF SECTION 23-212, SUBSECTION A
3 OR SECTION 23-212.01, SUBSECTION A REGARDING AN EMPLOYEE NAMED IN A COMPLAINT
4 UNDER SECTION 23-212 OR 23-212.01 IF THE EMPLOYER HAS COMPLETED BOTH OF THE
5 FOLLOWING:

6 1. IN GOOD FAITH VERIFIED THE EMPLOYMENT ELIGIBILITY OF THE EMPLOYEE
7 NAMED IN THE COMPLAINT THROUGH THE E-VERIFY PROGRAM OR IN GOOD FAITH VERIFIED
8 THE ACCURACY OF THE SOCIAL SECURITY NUMBER OF THE EMPLOYEE NAMED IN THE
9 COMPLAINT THROUGH THE SOCIAL SECURITY NUMBER VERIFICATION SYSTEM AS REQUIRED
10 BY SUBSECTION C, PARAGRAPHS 1 AND 2 OF THIS SECTION.

11 2. PROVIDED THE ATTORNEY GENERAL OR COUNTY ATTORNEY WITH THE
12 DOCUMENTS, AS REQUIRED BY SUBSECTION C, PARAGRAPH 3 OF THIS SECTION,
13 INDICATING THAT THE EMPLOYER VERIFIED THE EMPLOYEE NAMED IN THE COMPLAINT.

14 E. THE ATTORNEY GENERAL SHALL MAINTAIN A LIST OF EMPLOYERS ENROLLED IN
15 THE VOLUNTARY EMPLOYER ENHANCED COMPLIANCE PROGRAM AND MAKE THE LIST
16 AVAILABLE ON THE ATTORNEY GENERAL'S WEBSITE.

17 F. THE ATTORNEY GENERAL SHALL DEVELOP A FORM OF RECOGNITION THAT AN
18 EMPLOYER MAY DISPLAY TO THE GENERAL PUBLIC FOR ENROLLING IN THE VOLUNTARY
19 EMPLOYER ENHANCED COMPLIANCE PROGRAM.

20 G. IF AN EMPLOYER DOES NOT FULLY COMPLY WITH THIS SECTION, THE
21 ATTORNEY GENERAL SHALL TERMINATE THE EMPLOYER'S ENROLLMENT IN THE VOLUNTARY
22 EMPLOYER ENHANCED COMPLIANCE PROGRAM. AT ANY TIME, AN EMPLOYER MAY
23 VOLUNTARILY WITHDRAW FROM THE VOLUNTARY EMPLOYER ENHANCED COMPLIANCE PROGRAM
24 BY NOTIFYING THE ATTORNEY GENERAL. BEGINNING ON THE DATE OF TERMINATION OR
25 WITHDRAWAL, SUBSECTION D OF THIS SECTION NO LONGER APPLIES TO THE EMPLOYER
26 AND THE EMPLOYER SHALL IMMEDIATELY REMOVE ANY FORM OF RECOGNITION FROM PUBLIC
27 DISPLAY THAT IS AUTHORIZED UNDER THIS SECTION.

28 H. THE PROGRAM ESTABLISHED BY THIS SECTION ENDS ON JULY 1, 2018
29 PURSUANT TO SECTION 41-3102.

23-216. Independent contractors; applicability

FOR THE PURPOSES OF THIS ARTICLE, INDEPENDENT CONTRACTOR STATUS APPLIES TO AN INDIVIDUAL WHO PERFORMS SERVICES AND IS NOT AN EMPLOYEE PURSUANT TO SECTION 3508 OF THE INTERNAL REVENUE CODE.

Sec. 8. Title 23, chapter 2, article 7, Arizona Revised Statutes, is amended by adding section 23-361.01, to read:

23-361.01. Employer requirements; cash payments; unlawful practices; civil penalty

A. AN EMPLOYER THAT HAS TWO OR MORE EMPLOYEES AND PAYS HOURLY WAGES OR SALARY BY CASH TO ANY EMPLOYEE SHALL COMPLY WITH ALL OF THE FOLLOWING:

1. THE INCOME TAX WITHHOLDING LAWS PRESCRIBED IN TITLE 43, CHAPTER 4.
2. THE EMPLOYER REPORTING LAWS PRESCRIBED IN SECTION 23-722.01.
3. THE EMPLOYMENT SECURITY LAWS PRESCRIBED IN CHAPTER 4 OF THIS TITLE.
4. THE WORKERS' COMPENSATION LAWS PRESCRIBED IN CHAPTER 6 OF THIS

TITLE.

B. FOR A VIOLATION OF SUBSECTION A OF THIS SECTION, THE ATTORNEY GENERAL MAY BRING AN ACTION IN SUPERIOR COURT AGAINST AN EMPLOYER. ON A FINDING OF A VIOLATION OF SUBSECTION A OF THIS SECTION, THE COURT SHALL ORDER THE EMPLOYER TO PAY A CIVIL PENALTY THAT IS EQUAL TO TREBLE THE AMOUNT OF ALL WITHHOLDINGS, PAYMENTS, CONTRIBUTIONS OR PREMIUMS THAT THE EMPLOYER FAILED TO REMIT AS PRESCRIBED BY SUBSECTION A OF THIS SECTION OR FIVE THOUSAND DOLLARS FOR EACH EMPLOYEE FOR WHOM A VIOLATION WAS COMMITTED, WHICHEVER IS GREATER.

C. THE COURT SHALL TRANSMIT THE MONIES COLLECTED PURSUANT TO SUBSECTION B OF THIS SECTION TO THE STATE TREASURER, AND THE STATE TREASURER SHALL DEPOSIT THE MONIES IN THE STATE GENERAL FUND. MONIES DEPOSITED IN THE STATE GENERAL FUND PURSUANT TO THIS SUBSECTION SHALL BE EQUALLY APPROPRIATED TO THE DEPARTMENT OF EDUCATION AND THE DEPARTMENT OF HEALTH SERVICES FOR THE PURPOSES OF OFFSETTING INCREASED COSTS TO THIS STATE BY UNAUTHORIZED ALIENS.

D. THE CIVIL PENALTY UNDER THIS SECTION IS IN ADDITION TO ANY OTHER PENALTIES THAT MAY BE IMPOSED BY LAW.

1 Sec. 9. Title 41, chapter 6, Arizona Revised Statutes, is amended by
2 adding article 7.2, to read:

3 ARTICLE 7.2. LICENSING ELIGIBILITY

4 41-1080. Licensing eligibility; authorized presence;
5 documentation; applicability

6 A. AFTER SEPTEMBER 30, 2008, AN AGENCY OR POLITICAL SUBDIVISION OF
7 THIS STATE SHALL NOT ISSUE A LICENSE TO AN INDIVIDUAL IF THE INDIVIDUAL DOES
8 NOT PRESENT ANY OF THE FOLLOWING DOCUMENTS TO THE AGENCY OR POLITICAL
9 SUBDIVISION INDICATING THAT THE INDIVIDUAL'S PRESENCE IN THE UNITED STATES IS
10 AUTHORIZED UNDER FEDERAL LAW:

11 1. AN ARIZONA DRIVER LICENSE ISSUED AFTER 1996 OR AN ARIZONA
12 NONOPERATING IDENTIFICATION LICENSE.

13 2. A DRIVER LICENSE ISSUED BY A STATE THAT VERIFIES LAWFUL PRESENCE IN
14 THE UNITED STATES.

15 3. A BIRTH CERTIFICATE OR DELAYED BIRTH CERTIFICATE ISSUED IN ANY
16 STATE, TERRITORY OR POSSESSION OF THE UNITED STATES.

17 4. A UNITED STATES CERTIFICATE OF BIRTH ABROAD.

18 5. A UNITED STATES PASSPORT.

19 6. A FOREIGN PASSPORT WITH A UNITED STATES VISA.

20 7. AN I-94 FORM WITH A PHOTOGRAPH.

21 8. A UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES EMPLOYMENT
22 AUTHORIZATION DOCUMENT OR REFUGEE TRAVEL DOCUMENT.

23 9. A UNITED STATES CERTIFICATE OF NATURALIZATION.

24 10. A UNITED STATES CERTIFICATE OF CITIZENSHIP.

25 11. A TRIBAL CERTIFICATE OF INDIAN BLOOD.

26 12. A TRIBAL OR BUREAU OF INDIAN AFFAIRS AFFIDAVIT OF BIRTH.

27 B. THIS SECTION DOES NOT APPLY TO AN INDIVIDUAL, IF ALL OF THE
28 FOLLOWING APPLY:

29 1. THE INDIVIDUAL IS A CITIZEN OF A FOREIGN COUNTRY OR, IF AT THE TIME
30 OF APPLICATION, THE INDIVIDUAL RESIDES IN A FOREIGN COUNTRY.

1 2. THE BENEFITS THAT ARE RELATED TO THE LICENSE DO NOT REQUIRE THE
2 INDIVIDUAL TO BE PRESENT IN THE UNITED STATES IN ORDER TO RECEIVE THOSE
3 BENEFITS.

4 Sec. 10. Title 41, Arizona Revised Statutes, is amended by adding
5 chapter 44, to read:

6 CHAPTER 44

7 AUTHORIZED PRESENCE REQUIREMENTS

8 ARTICLE 1. GOVERNMENT PROCUREMENT

9 41-4401. Government procurement; E-verify requirement;
10 affidavit definitions

11 A. AFTER SEPTEMBER 30, 2008, A GOVERNMENT ENTITY SHALL NOT AWARD A
12 CONTRACT TO ANY CONTRACTOR OR SUBCONTRACTOR THAT FAILS TO REGISTER WITH AND
13 IS NOT PARTICIPATING IN THE E-VERIFY PROGRAM. BEFORE A CONTRACT IS AWARDED
14 BY A GOVERNMENT ENTITY, THE CONTRACTOR AND SUBCONTRACTOR SHALL SUBMIT A
15 SIGNED SWORN AFFIDAVIT TO THE GOVERNMENT ENTITY THAT THE CONTRACTOR OR
16 SUBCONTRACTOR IS REGISTERED WITH AND IS PARTICIPATING IN THE E-VERIFY
17 PROGRAM.

18 B. FOR THE PURPOSES OF THIS SECTION:

19 1. "CONTRACT" MEANS ALL TYPES OF GOVERNMENT ENTITY AGREEMENTS,
20 REGARDLESS OF WHAT THEY MAY BE CALLED, FOR THE PROCUREMENT OF SERVICES IN
21 THIS STATE.

22 2. "CONTRACTOR" MEANS ANY PERSON WHO HAS A CONTRACT WITH A GOVERNMENT
23 ENTITY.

24 3. "E-VERIFY PROGRAM" MEANS THE EMPLOYMENT VERIFICATION PILOT PROGRAM
25 AS JOINTLY ADMINISTERED BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY
26 AND THE SOCIAL SECURITY ADMINISTRATION OR ANY OF ITS SUCCESSOR PROGRAMS.

27 4. "GOVERNMENT ENTITY" MEANS THIS STATE AND ANY POLITICAL SUBDIVISION
28 OF THIS STATE THAT RECEIVES AND USES TAX REVENUES.

29 5. "SERVICES" MEANS THE FURNISHING OF LABOR, TIME OR EFFORT IN THIS
30 STATE BY A CONTRACTOR OR SUBCONTRACTOR. SERVICES INCLUDE CONSTRUCTION OR
31 MAINTENANCE OF ANY STRUCTURE, BUILDING OR TRANSPORTATION FACILITY OR
32 IMPROVEMENT OF REAL PROPERTY.

1 6. "SUBCONTRACTOR" MEANS A PERSON WHO CONTRACTS TO PERFORM WORK OR
2 RENDER SERVICE TO A CONTRACTOR OR TO ANOTHER SUBCONTRACTOR AS A PART OF A
3 CONTRACT WITH A GOVERNMENT ENTITY.

4 Sec. 11. Severability

5 If any provision of this act or its application to any person or
6 circumstance is held invalid, the invalidity does not affect other provisions
7 or applications of this act that can be given effect without the invalid
8 provision or application, and to this end the provisions of this act are
9 severable.

10 Sec. 12. Emergency

11 This act is an emergency measure that is necessary to preserve the
12 public peace, health or safety and is operative immediately as provided by
13 law."

14 Amend title to conform

ROBERT "BOB" BURNS

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